

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 159.5, 203.2 and 203C.5, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 90, "State Licensed Warehouses and Warehouse Operators," and Chapter 91, "Licensed Grain Dealers," Iowa Administrative Code.

The proposed amendments are intended to develop practices and procedures for the issuance and handling of paperless electronic warehouse receipts and credit-sale contracts which are presently required to be in written form. The proposed amendments also delete the provisions for posting of annual renewal fee receipts since the requisite information is now printed directly on the license certificates by the Department.

Any interested persons may make written suggestions or comments on these proposed amendments on or before 4:30 p.m. on December 9, 2008. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may also be submitted by fax to (515)281-6236 or by E-mail to [Margaret.Thomson@IowaAgriculture.gov](mailto:Margaret.Thomson@IowaAgriculture.gov).

These proposed amendments are subject to the Department's general waiver provisions.

These amendments are intended to implement Iowa Code chapter 203, Iowa Code Supplement chapter 203C, and 2008 Iowa Acts, House File 2606.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **21—90.2(203C)**:

*"Person"* means the same as defined in Iowa Code section 4.1.

*"Provider"* means a person approved by the department to maintain a secure electronic central filing system of electronic warehouse receipt records pursuant to Iowa Code Supplement section 203C.18.

*"Provider agreement"* means an agreement required by this chapter which is entered into between the department and a provider.

*"USDA"* means the United States Department of Agriculture and its divisions and agencies, including, but not limited to, the Farm Service Agency.

*"USDA Provider Agreement"* means the agreement entered into between the USDA and a provider and which is printed on USDA Form WA-460 and any addenda thereto.

*"User agreement"* means an agreement required by this chapter which is entered into between a provider and a warehouse operator licensed by the department pursuant to the provisions of Iowa Code chapter 203C.

ITEM 2. Amend rule 21—90.6(203C) as follows:

**21—90.6(203C) Posting of license and fee receipt.** The warehouse operator license certificate, including the warehouse diagram ~~and the fee receipt for the current license period~~, shall be posted at all times in a conspicuous location in the place of business. A license certificate shall be posted in each location where grain is delivered or weighed. Upon receipt of an amended license, the warehouse operator shall immediately post the amended license and remove the old license.

This rule is intended to implement Iowa Code section 203C.34.

ITEM 3. Amend rule 21—90.15(203C) as follows:

**21—90.15(203C) ~~Form of warehouse receipt~~ Warehouse receipts.**

**90.15(1) *Warehouse receipt forms.*** Warehouse receipt forms shall be 8.25 inches wide by 7 inches long and shall be printed in not less than triplicate. The original receipt shall be white, and the weight of the paper shall not be less than 20-pound base; the warehouse operator's copy shall be yellow and the weight of the paper shall not be less than 16-pound base; and the owner's copy shall be green and the weight of the paper shall not be less than 16-pound base. Receipts issued for bulk grain and receipts issued for agricultural products other than bulk grain shall be in a form prescribed by the department. The bureau shall have control over the printing of warehouse receipts.

**90.15(2) *Electronic warehouse receipts.*** A warehouse operator licensed in accordance with the provisions of Iowa Code chapter 203C may contract with an independent provider to issue electronic warehouse receipts for grain and other agricultural products subject to the provisions of this chapter. The provider shall be approved by the department.

**90.15(3) *Electronic warehouse receipt providers and provider agreements.*** A provider shall be independent of any outside influence or bias in action or appearance. A provider shall enter into a provider agreement with the department prior to being approved by the department. A provider shall file and maintain electronic warehouse receipts only on behalf of licensed warehouse operators who contract with the provider for those services. The provider agreement shall be subject to, but not be limited to, the provisions of paragraphs "a" through "k" of this subrule.

a. *Provider to be approved by the USDA.* No provider shall be approved by the department unless the provider is first approved as an electronic warehouse receipt provider by the USDA pursuant to the provisions of 7 CFR Part 735. Upon department request, a provider shall provide a copy of the provider's executed USDA Form WA-460 and any addenda, and any other documentation requested by the department to confirm that the provider is a USDA-approved provider in good standing.

b. *USDA action against providers.* In the event that the USDA shall take action to deny, withdraw, suspend, reinstate or terminate a USDA Provider Agreement, the department shall automatically take the same action and the provider shall be subject to such action by the department. A provider shall notify the department of any such actions taken by the USDA.

c. *Provider to service only licensed warehouse operators.* A provider shall enter into user agreements under the terms of this rule only with warehouse operators licensed in accordance with the provisions of Iowa Code chapter 203C. A provider shall not issue electronic warehouse receipts for grain or other agricultural products on behalf of a warehouse operator in the state of Iowa unless the warehouse operator is licensed in accordance with the provisions of Iowa Code chapter 203C or the United States Warehouse Act.

d. *Notice requirements for providers.*

(1) When entering into a new user agreement, a provider shall provide written notice to the department.

(2) All notices to the USDA required by 7 CFR Part 735 and in the USDA Provider Agreement shall also be served upon the department except as specifically exempted in the provider agreement.

(3) In the user agreement, a provider shall include a notice to the warehouse operator that the data on the provider's central filing system is subject to disclosure to the department and the USDA.

e. *Provisions to cease issuing electronic warehouse receipts.* Upon notice by the department that a warehouse operator license issued under Iowa Code chapter 203C has been terminated, canceled, suspended or revoked, a provider shall prohibit the warehouse operator from issuing any electronic warehouse receipts until further notice from the department.

f. *Department access to electronic warehouse receipt data.* A provider shall allow the department unrestricted access to the central filing system for electronic warehouse receipts issued on behalf of warehouse operators licensed by the department. The electronic warehouse receipt data shall be maintained for six years after cancellation of the receipts. Access shall be made available in a manner that allows interaction with department warehouse examinations. Access shall be free of any charge or costs to the department.

g. *Information profile.* Upon issuance of a new user agreement to a warehouse operator licensed under Iowa Code chapter 203C, the provider shall notify the department and request an information profile. The department shall provide an information profile about the warehouse operator to the provider. The information profile shall consist of identifying information unique to each warehouse operator and shall be contained within each electronic warehouse receipt issued by a warehouse operator. The information profile shall include all statements and content required for warehouse receipts by the laws of the state of Iowa and as required by the provisions of the USDA Form WA-460 and any addenda pursuant to paragraph “a” of this subrule. This information profile shall include, but not be limited to, the following:

(1) The warehouse operator’s name;  
(2) The type of business organization and the state under whose laws the business is organized;  
(3) The location of the warehouse operator’s corporate headquarters and the location of the warehouse;

(4) The warehouse operator’s license number; and

(5) For grain warehouse receipts, the following statement: “The warehouse operator named herein, licensed under Iowa Code chapter 203C, has received for storage bulk grain of the amount, kind and grade, as determined in accordance with the official grain standards of the United States, for which this receipt is issued, subject to the provisions of Iowa Code chapters 203C and 203D and the applicable rules. Said grain is fully insured, unless otherwise allowed by law and noted within this receipt, by the above-named warehouse operator against loss or damage by fire, windstorm and inherent explosion.”

h. *Termination of provider agreement.* The department or provider may terminate the provider agreement upon 60 days’ written notice to the other party. The department shall terminate a provider agreement on less than 60 days’ notice in accordance with paragraph “b” of this subrule. Upon termination of the provider agreement, the provider shall immediately surrender copies of the electronic data and paper records to the department for any electronic warehouse receipts contained within the central filing system. Such data and paper record copies, however, are limited to electronic warehouse receipts issued by warehouse operators licensed under the provisions of Iowa Code chapter 203C.

i. *Authorization, jurisdiction and liability.* A provider shall be authorized to transact business in the state of Iowa and shall consent to jurisdiction in the state of Iowa and venue in Polk County, Iowa. A provider shall be liable to the department for costs incurred by the department as a result of action taken in the event of a failure of the central filing system or any inability to provide the access required in paragraph “f” of this subrule.

j. *Nonexclusive use.* A warehouse operator shall not be required to issue warehouse receipts in electronic form.

k. *Receiverships and indemnity fund claims—department as electronic warehouse receipt holder.*

(1) A provider shall allow for the department and the grain indemnity fund board to be a sole or joint holder of an electronic warehouse receipt when the issuing warehouse operator’s license has been revoked and either one or both of the following apply:

1. The electronic warehouse receipt has been surrendered to the department by a claimant for the proceeds of a grain receivership pursuant to Iowa Code chapter 203C.

2. The electronic warehouse receipt has been surrendered to the department or the grain indemnity fund board by a claimant for payment of a grain indemnity fund claim pursuant to Iowa Code chapter 203D.

(2) When an electronic receipt holder files a claim against a grain receivership or against the grain indemnity fund, the department shall obtain the consent and instruction of the holder to change the holder information on the provider’s central filing system. The provider shall take any action ordered by the department in regard to an electronic warehouse receipt involved with a grain receivership or a grain indemnity fund claim. The department shall provide documentary evidence of the claim and any resulting required action to the provider. The department may order any action including, but not limited to, the following:

1. Reducing the quantity and value of the product represented by an electronic receipt upon payment of partial value from either receivership proceeds or the grain indemnity fund;

2. Prohibiting an electronic warehouse receipt from being negotiated or otherwise transferred without the department's consent due to payment of partial value from either receivership proceeds or the grain indemnity fund;

3. Canceling a warehouse receipt upon payment of full value to a claimant from receivership proceeds, and issuing a replacement receipt to the department if needed.

**90.15(4) Electronic warehouse receipt users and agreements.** Prior to engaging in the issuance of electronic warehouse receipts, a warehouse operator shall enter into a user agreement with a provider approved by the department. All electronic warehouse receipts issued by the warehouse operator shall be issued through and filed in the provider's electronic central filing system. As used in this subrule, "warehouse operator" means a warehouse operator who has obtained a license for the operation of a warehouse under Iowa Code section 203C.6. The use of electronic warehouse receipts is subject to the provisions of paragraphs 90.15(3)"a" through "g."

a. Warehouse operator to use only one provider. A warehouse operator shall issue electronic warehouse receipts through only one provider.

b. Changing providers. Subject to the provisions of a user agreement in effect, a warehouse operator may change providers once per year. The provider shall follow the transfer terms specified in USDA Form WA-460 and any addenda pursuant to paragraph 90.15(3)"a." The warehouse operator shall notify the department of a change in provider.

c. Numbering of receipts—no duplication. Electronic warehouse receipts shall be numbered and shall be issued consecutively starting with the number specified to the provider by the department. A warehouse operator shall not at any time have an electronic warehouse receipt and a paper warehouse receipt outstanding for the same lot of grain.

d. Nonexclusive use. A warehouse operator shall not require a depositor to accept an electronic warehouse receipt in lieu of a paper warehouse receipt.

e. Receipt holder power of attorney. A warehouse operator or a third party may not handle electronic warehouse receipts on behalf of a depositor unless a written power of attorney to do so has been provided by the depositor. Such power of attorney shall be provided to the department for inspection and verification upon the department's request.

f. Issuance and cancellation of receipts. The provisions for issuance and cancellation of warehouse receipts found in rules 21—90.12(203C) and 21—90.13(203C) shall apply to electronic warehouse receipts except to the extent that the rules are not applicable to electronic warehouse receipts. A warehouse operator shall not cancel an electronic warehouse receipt unless the warehouse operator is the holder of the warehouse receipt.

This rule is intended to implement Iowa Code sections 203C.2, ~~and~~ 203C.5 and 203C.6 and Iowa Code Supplement section 203C.18.

ITEM 4. Adopt the following **new** definitions in rule **21—91.2(203)**:

"Person" means the same as defined in Iowa Code section 4.1.

"Provider" means a person approved by the department to maintain a secure electronic central filing system of electronic grain contract records.

"Provider agreement" means an agreement regarding electronic grain contracts which is entered into between the department and a provider.

"USDA" means the United States Department of Agriculture and its divisions and agencies, including, but not limited to, the Farm Service Agency.

"USDA Provider Agreement" means the agreement entered into between the USDA and a provider and which is printed on USDA Form WA-490 and any addenda thereto.

"User agreement" means an agreement regarding electronic grain contracts which is entered into between a provider and a licensee.

ITEM 5. Amend rule 21—91.5(203) as follows:

**21—91.5(203) Posting of license and fee receipt.** The grain dealer license certificate ~~and annual fee receipt for the current license period~~ shall be posted at all times in a conspicuous location in the office

or place of business of the grain dealer. A license certificate shall be posted in each location where grain is purchased or delivered.

This rule is intended to implement Iowa Code section 203.7.

ITEM 6. Adopt the following **new** rule 21—91.22(203):

**21—91.22(203) Electronic grain contracts.** Subject to the provisions of this chapter, a licensee may issue electronic grain contracts using its own computer system or may contract with an independent provider to issue electronic grain contracts. If the licensee contracts with an independent provider, rules 21—91.22(203) through 21—91.26(203) shall apply. If the licensee issues electronic grain contracts using its own computer system, rules 21—91.22(203), 21—91.25(203) and 21—91.26(203) shall apply.

This rule is intended to implement Iowa Code sections 203.2 and 203.17.

ITEM 7. Adopt the following **new** rule 21—91.23(203):

**21—91.23(203) Electronic grain contract providers and provider agreements.** A provider shall be independent of any outside influence or bias in action or appearance. A provider shall enter into a provider agreement with the department prior to being approved by the department. A provider shall issue and maintain electronic grain contracts only on behalf of licensees who contract with the provider for those services. The provider agreement shall be subject to, but not be limited to, the provisions of subrules 91.23(1) through 91.23(7).

**91.23(1) Provider to be approved by the USDA.** No provider shall be approved by the department unless the provider is first approved as a provider of “other electronic documents” by the USDA pursuant to the provisions of 7 CFR Part 735. Upon department request, a provider shall provide a copy of the provider’s executed USDA Form WA-490 and any addenda, and any other documentation requested by the department to confirm that the provider is a USDA-approved provider in good standing.

**91.23(2) USDA action against providers.** In the event that the USDA shall take action to deny, withdraw, suspend, reinstate or terminate a USDA provider agreement, the department shall automatically take the same action and the provider shall be subject to such action by the department. A provider shall notify the department of any such actions taken by the USDA.

**91.23(3) Notice requirements for providers.**

*a.* When entering into a new user agreement, a provider shall provide written notice to the department.

*b.* All notices to the USDA required by 7 CFR Part 735 and by the USDA provider agreement shall also be served upon the department except as specifically exempted in the provider agreement.

*c.* In the user agreement, a provider shall include a notice to the licensee that the data on the provider’s central filing system is subject to disclosure to the department and the USDA.

**91.23(4) Provisions to cease issuing electronic grain contracts.** Upon notice by the department that a grain dealer license issued under Iowa Code chapter 203 has been terminated, canceled, suspended or revoked, a provider shall prohibit the licensee from entering into any electronic grain contracts until further notice from the department. Upon notice by the department that a licensee has had its right to purchase grain by credit-sale contract suspended or denied under rule 21—91.17(203), a provider shall prohibit the licensee from entering into any electronic credit-sale grain contracts until further notice from the department.

**91.23(5) Department access to electronic grain contract data.** A provider shall allow the department unrestricted access to the central filing system for electronic grain contracts issued on behalf of licensees. The electronic grain contract data shall be maintained for six years after a contract has been canceled. Access shall be made available in a manner that allows interaction with department examinations. Access shall be free of any charge or costs to the department.

**91.23(6) Termination of provider agreement.** The department or provider may terminate the provider agreement upon 60 days’ written notice to the other party. The department shall terminate a provider agreement on less than 60 days’ notice in accordance with subrule 91.23(2). Upon termination of the provider agreement, the provider shall immediately surrender to the department copies of the electronic

data and paper records for any electronic grain contracts contained within the central filing system. Such data and paper record copies, however, are limited to electronic grain contracts issued by licensees.

**91.23(7) *Authorization, jurisdiction and liability.*** A provider shall be authorized to transact business in the state of Iowa and shall consent to jurisdiction in the state of Iowa and venue in Polk County, Iowa. A provider shall be liable to the department for costs incurred by the department as a result of action taken in the event of a failure of the central filing system or any inability to provide the access required in subrule 91.23(5).

This rule is intended to implement Iowa Code sections 203.2, 203.15, and 203.17.

ITEM 8. Adopt the following **new** rule 21—91.24(203):

**21—91.24(203) Electronic grain contract users and user agreements.** Prior to engaging in the issuance of electronic grain contracts, a licensee shall enter into a user agreement with a provider approved by the department. All electronic grain contracts issued by the licensee shall be issued through and filed in the provider's electronic central filing system. The use of electronic grain contracts is subject to the provisions of subrules 91.23(1) through 91.23(5).

**91.24(1) *Licensee to use only one provider.*** A licensee shall issue electronic grain contracts through only one provider.

**91.24(2) *Changing providers.*** Subject to the provisions of a user agreement in effect, a licensee may change providers once per year. The provider shall follow the transfer terms specified in USDA Form WA-490 and any addenda pursuant to subrule 91.23(1). The licensee shall notify the department of a change in provider.

This rule is intended to implement Iowa Code sections 203.2 and 203.17.

ITEM 9. Adopt the following **new** rule 21—91.25(203):

**21—91.25(203) Electronic grain contracts—issuance and form.** Electronic grain contracts shall comply with the provisions of Iowa Code chapters 203 and 554D.

**91.25(1) *Agreement to conduct electronic transactions.*** A licensee or the licensee's provider shall maintain complete and sufficient records to show agreement between the grain seller and the licensee to conduct electronic grain contract transactions. The records shall be presented to the department for inspection upon request. An electronic grain contract shall be capable of being printed or stored by both the licensee and the grain seller.

**91.25(2) *Electronic signatures.*** Sufficient security procedures shall be used by a licensee or the licensee's provider to reasonably ascertain that the electronic grain contract signature is the act of the grain seller. The security procedures shall be subject to the review of and approval by the department. A seller shall be allowed to sign an electronic grain contract only at the conclusion of all electronic grain contract terms and conditions.

**91.25(3) *Numbering of electronic contracts—no duplication.*** Electronic grain contracts shall be consecutively numbered as issued. A licensee shall not at any time have an electronic grain contract and a paper grain contract outstanding for the same lot of grain.

**91.25(4) *Seller power of attorney.*** A licensee or a third party may not handle electronic grain contracts on behalf of a seller unless a written power of attorney to do so has been provided by the seller. Such power of attorney shall be provided to the department for inspection and verification upon the department's request.

**91.25(5) *Issuance, form, cancellation, and assignment of electronic credit-sale contracts.*** The provisions for issuance, cancellation, and assignment of credit-sale contracts found in rules 21—91.11(203) and 21—91.12(203) shall apply to electronic credit-sale contracts except to the extent that the rules are not applicable to paperless credit-sale contracts.

**91.25(6) *Authorization to issue electronic credit-sale contracts.*** A licensee who issues electronic credit-sale contracts shall comply with all requirements of rule 21—91.17(203).

**91.25(7) *Nonexclusive use.*** A licensee shall not be required to issue grain contracts in electronic form.

This rule is intended to implement Iowa Code sections 203.2, 203.15, 203.17, 554D.106, 554D.110 and 554D.111.

ITEM 10. Adopt the following **new** rule 21—91.26(203):

**21—91.26(203) Security of a provider’s electronic central filing system or a licensee’s electronic database.** Only authorized employees of the licensee shall have access to the provider’s central filing system or the licensee’s electronic database. A provider shall prevent unauthorized persons from gaining access to its central filing system. If a licensee uses its own computer database, the licensee shall maintain a backup of the database to ensure electronic grain contracts are not inadvertently lost.

This rule is intended to implement Iowa Code sections 203.2 and 203.17.